

FILED

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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARIA DEL CARMEN OROZCO-
ORTEGA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71518

Agency No. A79-524-232

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 11, 2005^{**}

Before: HALL, T.G. NELSON, and TALLMAN, Circuit Judges.

Maria Del Carmen Orozco-Ortega, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming an immigration judge's denial of her application for cancellation of removal. We

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction pursuant to 8 U.S.C. § 1252. We review de novo the agency's legal determination that a petitioner is statutorily ineligible for cancellation of removal, *see Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1145 (9th Cir. 2002), and we deny the petition for review.

The BIA properly determined that the petitioner was statutorily ineligible for cancellation of removal because she lacked a qualifying relative. *See* 8 U.S.C. § 1229b(b)(1)(D) (requiring a showing of “exceptional and extremely unusual hardship to the alien’s spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence”). Although the record supports petitioner’s claim that her grandchildren and adult daughter would suffer if she were removed to Mexico, neither falls under the definition of a “child” for the purposes of establishing eligibility under 8 U.S.C. § 1229b(b)(1)(D). *See* 8 U.S.C. § 1101(b)(1) (the term “child” as used in the cancellation of removal provision is defined as “an unmarried person under twenty-one years of age”); *Montero-Martinez*, 277 F.3d at 1144-45 (alien’s adult daughter, who was over 21 years old at all relevant times, did not qualify as a “child” under the cancellation statute).

Petitioner’s contention that the IJ violated her due process rights by not allowing her daughter and grandchildren to testify in support of her application is unavailing because she failed to show that the proceedings were so fundamentally

unfair that she was prevented from reasonably presenting her case. *See Lopez-Umanzor v. Gonzales*, 405 F.3d 1049, 1056-58 (9th Cir. 2005).

PETITION FOR REVIEW DENIED.